



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MGE/167981

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 13, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Washington County Department of Social Services in regard to Medical Assistance, a hearing was held on September 29, 2015, at West Bend, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's application for institutional MA for July, 2015.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Shawn Carlson

Washington County Department of Social Services  
333 E. Washington Street  
Suite 3100  
West Bend, WI 53095

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.

2. On or about July 16, 2013, Petitioner established a burial trust with a value of \$12,000. The statement of charges indicates that the trust includes a charge for a casket of \$2,940 and for an outer contained of \$1,290.
3. Petitioner moved to a skilled nursing facility on December 26, 2014.
4. On July 10, 2015, the Petitioner submitted an application for institutional MA.
5. On July 20, 2015, the agency issued a Notice of Decision to the Petitioner informing her that her application was denied due to assets over the program limit.
6. On August 13, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.
7. On or about August 18, 2015, the Petitioner's representative switched the burial trust to burial insurance.
8. On September 2, 2015, the agency issued a Notice of Decision to the Petitioner's representative informing her that the Petitioner is enrolled in institutional MA effective August 1, 2015 with no monthly premium.

### **DISCUSSION**

A person cannot receive medical assistance if her assets exceed \$2,000. Wis. Admin. Code, § DHS 103.06(1)(a); Wis. Stat. §§ 49.46(1) and 49.47(4).

With regard to the treatment of burial trusts in determining an applicant's countable assets, the Medicaid Eligibility Handbook at §16.5.1 states:

Exempt all burial trusts made in Wisconsin that are irrevocable by Wisconsin law, as noted in the trust agreement . . . In non-spousal Impoverishment EBD [Elderly, Blind, Disabled] Medicaid cases, each fiscal group member may have one or more irrevocable burial trust, of which the total face value may not exceed \$3,000. Any principal amount over \$3,000 is a countable asset.

This Handbook provision is based upon Wis. Stat., §445.125(1)(a)2, which provides that only the first \$3,000 of a burial agreement with a funeral director can be considered irrevocable. Therefore, although the document is called an irrevocable trust, state law supersedes the language. Therefore the excess is by law revocable, and thus can be counted as an asset. See MA Handbook, App. 16.6.3.

Operations Memo 14-34 issued by the Department of Health Services on August 13, 2014 expanded the amount of an irrevocable burial trust that may be exempt from countable assets to \$4,500.

“Currently, a total of \$3,000 of the principal amount in a member's irrevocable burial trust(s) is treated as exempt, regardless of who contributed the funds, and an additional amount up to \$1,500 of the principle amount in an irrevocable burial trust(s) can be exempt as long as it was contributed by friends or family of the applicant or member. Effective immediately, this additional amount can also be contributed directly by the member, and there is no longer any provision for family or friends to contribute.”

DHCAA Operations Memo 14-34.

The MA Handbook at § 16.5.4 also allows an exemption from assets for burial spaces for EBD applicants:

Burial space exemptions apply only to EBD fiscal group members. Burial space exemptions include the following, if they have been paid for:

1. Plots, vaults, caskets, crypts, mausoleums, urns, or other repositories customarily used for the remains of deceased persons, and
2. Necessary and reasonable improvements upon the burial space with items such as headstones, markers, plaques, and
3. Arrangements for opening and closing the gravesite.

In this case, Petitioner is an EBD non-spousal impoverishment applicant because she is elderly and/or disabled and does not have a community spouse.

The agency reviewed the Petitioner's burial trust and determined that the casket and outer container totaling \$4,230 was an exempt asset under §16.5.4. The agency applied the \$4,500 exempt allowed by § 16.5.1. After subtracting these two exemptions from the \$12,000 face value of the trust, the agency determined that \$3,270 of the trust was an available asset.

The Petitioner's representatives assert that only the first sentence of § 16.5.1 should apply and that the entire burial trust should have been considered exempt. The remaining sections of the policy and the law cannot be ignored. As an EBD non-spousal impoverishment applicant, only \$4,500 of the burial trust asset is exempt. Per § 16.5.4, the casket and container portion of the trust are also exempt. Therefore, based on the evidence presented, I conclude that the agency properly denied the Petitioner's application for institutional MA for the month of July, 2015 due to assets exceeding the \$2,000 asset limit.

### **CONCLUSIONS OF LAW**

The agency properly denied the Petitioner's application for institutional MA for the month of July, 2015 due to assets exceeding the \$2,000 asset limit.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 2nd day of November, 2015

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 2, 2015.

Washington County Department of Social Services  
Division of Health Care Access and Accountability